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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/008,781	11/13/2001	David Hathaway	7037-438	5711
7590 09/27/2005			EXAMINER	
Thomas Q. Henry Woodard, Emhardt, Naughton, Moriarty and McNett Bank One Center/Tower 111 Monument Circle, Suite 3700 Indianapolis, IN 46204-5137			WOO, JULIAN W	
			ART UNIT	PAPER NUMBER
			3731	
DATE MAILED: 09/27/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 43-50 and 52 are rejected under 35 U.S.C. 102(b) as being anticipated by Buelna et al. (5,700,273). Lee discloses, in figure 12, an apparatus with a tubular body (30), an advanceable, hollow needle (225 or 227) with a lumen that is configured to carry a suture (and needle 90 or 92), a suture chamber (proximal portion of 30), a suture (72) attached to the needle (when needles 90 and 92 are retracted into hollow needle 225 or 227, a suture retrieval assembly (needles 90 and 92), and an openable hemostatis seal (118).

Allowable Subject Matter

3. Claims 37-41 are allowed.
4. Claim 51 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
5. The following is a statement of reasons for the indication of allowable subject matter: None of the prior art of record, alone or in combination, discloses an apparatus for suturing a tissue membrane with, inter alia, a tubular body, a needle, and an

openable hemostasis seal member, where the needle has an eyelet and a length of suture through the eyelet.

As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

Response to Amendment

6. The rejection under 35 U.S.C. 112, second paragraph, of claim 50 has been overcome.

Applicant's arguments with respect to the rejections based on the reference of Buelna et al. have been considered but are not persuasive. The arguments are directed to the intended use of the invention ("to carry at least a portion of a length of suture through the tissue membrane as the needle is advanced distally"), which does not differentiate the claimed apparatus from the apparatus of Buelna et al., which satisfies the claimed structural limitations. Moreover, the apparatus of Buelna et al.—i.e. the hollow needle—is fully capable of advancing distally through a tissue membrane.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

Art Unit: 3731

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian W. Woo whose telephone number is (571) 272-4707. The examiner can normally be reached Mon.-Fri., 7:00 AM to 3:00 PM Eastern Time, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Julian W. Woo
Primary Examiner

September 21, 2005